1761551N25A - SH-AD-32A (OPES) (4/91)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: March 31, 2005

EXECUTIVE FORCE REVIEW COMMITTEE
POLICY ASSESSMENT
DISPOSITION SHEET

FILE NO: #2114412

FROM: JOHNNY G. JURADO, COMMANDER
ERIC B. SMITH, COMMANDER
ROBERT L. BINKLEY, COMMANDER

TO: KARYN MANNIS, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: KELLEY, TINA, DEPUTY #[redacted] TRANSIT SERVICE BUREAU, FOR II
GARCIA, DIANNE, DEPUTY #[redacted] TRANSIT SERVICE BUREAU, FOR II
RIORDAN, DANIEL, DEPUTY #[redacted] TRANSIT SERVICE BUREAU, FOR II

On March 29, 2004, Deputy Riordan and his partner Deputy Scott Harper were flagged down by a Blue Line Train driver who said a man was running around on the tracks. The deputies requested additional personnel respond and asked that train traffic be stopped at a nearby station. The deputies parked their patrol car at the nearby station (the only safe place to park in the area) and began to walk down the tracks. The deputies saw the male (Kevin Ellis) and ordered him to surrender. Instead, Ellis threw rocks at the deputies. The deputies ordered Ellis to stop throwing rocks and come out of the bushes he was hiding in. Ellis refused to comply. Ellis was crouched near some bushes, with his right hand concealed in his waistband. The deputies ordered Ellis to show his hands and surrender. Ellis refused and claimed to have a gun. Additional deputies arrived and a tactical plan was developed involving less lethal force options (stunbag shotguns) and a ballistic shield. Evacuations of nearby residences were begun and Canine Services Detail (CSD) requested to respond. Ellis ran deeper into a patch of bushes, out of the direct view of personnel on scene. While various options of flushing Ellis out of the bushes were being considered, Ellis ran from the bushes directly at the group of deputies who had staged as the arrest team. Ellis ignored commands to stop and surrender, and ran at the deputies with his right hand concealed in his waistband. Believing that Ellis was armed and in the process of withdrawing his gun and attacking the deputies, Deputy Riordan fired three 9mm rounds at Ellis, Deputy Garcia fired four 9mm rounds and Deputy Kelley fired two 9mm rounds. Deputy [redacted] fired three stunbag shotgun rounds at Ellis and Deputy [redacted] fired one stunbag shotgun round at Ellis. Ellis fell to the ground, but continued to conceal his right hand. Deputy Riordan repeatedly ordered Ellis to show his hand. When he refused, Deputy Riordan had deputy [redacted] fire his last stunbag shotgun round at Ellis. When Ellis still refused to show his hands, Deputy Riordan then had Deputy [redacted] fire three more stunbag shotgun rounds at Ellis. After the final stunbag shotgun round was fired,

Ellis finally pulled his right hand from his waistband and raised it into the air. An arrest team was formed and the suspect was taken into custody. Ellis suffered a single gunshot wound to his upper torso and survived. No deputy personnel were injured.

On February 10, 2005, the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: 3-01/025.00, Use of Force; 3-01/025.30, Use of Firearms and Deadly Force; 3-01/025.10, Unreasonable Force; and 3-01/050.10, Performance to Standards. Concerning:

3-01/025.00, Use of Force, 3-01/025.30, Use of Firearms and Deadly Force, and 3-01/025.10, Unreasonable Force, the Committee determined that the force used by all deputies was reasonable and necessary and in compliance with Department policy.

3-01/050.10, Performance to Standards, the Committee determined that the tactics employed by all deputies in this incident were within Department Policy.

Johnny G. Jurado, Commander

TABLE OF CONTENTS

Los Angeles County Sheriff's Department
Officer Involved Shooting

Report Date: 03-30-04	Bureau/Station/Facility: TRANSIT SERVICES BUREAU	Admin. Invest.? [ ]	Hit? [X]

Incident Information

URN: 004-02160-6008-055	Date: 03-29-04 Time: 2035
City or Station: LONG BEACH	Nature of Incident: DEPUTIES SHOT SUSPECT AFTER HE RUSHED THEM SIMULATING THAT HE HAD A HAND GUN.
Location: [redacted] DEL MAR AVENUE LONG BEACH, CA.	

Location Type (*circle one or more*): Backyard, Beach, Business, Freeway, Industrial, Park, Parking Lot, Residence, Rural, School, Street, Other: R.R. TRACKS

Lighting (*circle only one*): Darkness, Daylight, Other, **(Street Lights)**

Weather (*circle only one*): **(Clear)**, Cloudy, Fog, Rain

Distance: 10-12 FEET

Incident Type (*circle one or more*): Accidental, Armed Person, Fleeing Suspect, Foot Pursuit, Gun Take Away, Moving Vehicle, Sniper/Ambush, Startle, Struggle Involved, Traffic Stop, **(Unarmed Person)**, Unintentional, Vehicle Pursuit, Warrant Service, Other: ____

Initiated by (*circle only one*): Arrest Warrant, **(Call)**, Observation, One Person Unit, Other, Search Warrant, Two Person Unit

Prior Activity (*circle only one*): Detective, Inmate Transport, Other, **(Routine Patrol)**

Total # of Shots Fired by Deputy: 9

Total # of Shots Fired by Suspect: 0

Aero Unit? [X] Canine Unit? [X]

Employee Witnesses

Employee #	Last Name	First Name	M.I.	ShiftTime (*circle only one*)	ShiftType (*circle only one*)
[redacted]	QUESADA	MARLON	NMN	EM **(PM)** Day	**(Regular)** Overtime Off Duty
[redacted]	REYNOLDS	ROBERT	L.	EM **(PM)** Day	**(Regular)** Overtime Off Duty
[redacted]	[redacted]	[redacted]	[redacted]	EM **(PM)** Day	**(Regular)** Overtime Off Duty

Non-Employee Witnesses

Last Name	First Name	M.I.
NONE		
Street Address / City	Zip Code	Work Ph / Home Ph
Last Name	First Name	M.I.
Street Address / City	Zip Code	Work Ph / Home Ph
Last Name	First Name	M.I.
Street Address / City	Zip Code	Work Ph / Home Ph

Supervisors

Employee #	Last Name	First Name	M.I	(*circle one or more*)	
[redacted]	IMURA	GAYLORD	J.	**(On Duty)** **(Present during shooting)**	**(Witness to shooting)** Involved in shooting
[redacted]	WILKINSON	JOHN	M.	**(On Duty)** **(Present during shooting)**	Witness to shooting Involved in shooting

Watch Sergeant

Employee #	Last Name	First Name	M.I.
[redacted]	RYAN	JEROME	F.

Watch Commander

Employee #	Last Name	First Name	M.I.
[redacted]	GJENDEM	ERNIE	A.

PSTD Use Only

SH# 2114412

Officer Involved Shooting

URN: 004-02160-6008-055

Rollout Information

Arrival Date	Arrival Time	Date Submitted	Date of Recommendation
03-29-04	2315	11-23-04	

Employee #	Last Name	First Name	M.I
[redacted]	JOHNSON	GREGORY	H.
[redacted]	HINES	WILLIAM	L.
[redacted]	ALEXANDER	TAMARA	A.

Shooting / Force Information

Method

(AW) Arwen
(BC) Baton:(Control)
(BI) Baton:(Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds:(Control Techniques)
(TT) Control Holds:(Team Takedown)
(TD) Control Holds:(Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(CN) Restraint Device (Capture Net)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device:Hobble (Legs Only)
(TP) Restraint Device:Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(SG) 37mm Stinger
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative

Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious
(RM) Refused Med Treatment
(NN) NONE

Body Part Injured

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hand
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(SH) Shoulder
(WR) Wrist

Brand

(AK) AK-47
(BN) Benelli
(BR) Beretta
(BW) Browning
(CH) Charter Arms
(CO) Colt
(DA) Davis Industries
(GL) Glock
(HA) Harrington & Richardson
(HI) Hi Standard
(HK) H & K
(IT) Ithica
(IV) Iver Johnson
(JE) Jennings
(LO) Lorcin
(LU) Luger
(MA) Marlin
(MO) Mossberg
(NC) NCI aka SKS
(NA) North American
(NO) Norinco
(RA) Raven
(RM) Remington
(RG) RG
(RI) RGI
(RO) Rossi
(SW) Smith & Wesson
(SR) Sturm Ruger
(ST) Sterling
(TA) Taurus
(WE) Weatherby
(WN) Winchester
(US) US Government
(YY) Handmade (Inmate)
(XX) Homemade (Non-Inmate)
(ZZ) Other Brand

Caliber

(9) 9 mm
(10) 10 mm
(12) 12 guage
(20) 20 guage
(21) .22-250
(22) .22 caliber
(23) .223 caliber
(24) .243 caliber
(25) .25 caliber
(30) .308 caliber
(35) .357 caliber
(36) 30-60 caliber
(38) .38 caliber
(40) .40 caliber
(41) .410 guage
(44) .44 caliber
(45) .45 caliber
(50) 50 mm
(SL) Slug
(WW) Other caliber

FORCE APPLIED *(one code per block)*

Used By (E# or S#)	Used Against (E# or S#)	Method (Code)	Brand (Code)	Caliber (Code)	Authorized Weapon? (Y/N)	Authorized Ammunition? (Y/N)	Type of Injury (Code)	Body Part (Code)
E#1	S#1	FH	BR	9	Y	Y	GS	CH
E#2	S#1	FH	BR	9	Y	Y	GS	CH
E#3	S#1	FH	BR	9	Y	Y	GS	CH
S#1	E#1	UC					NN	
S#1	E#2	UC					NN	
S#1	E#3	UC					NN	

Officer Involved Shooting
Involved Employee Information

URN: 004-02160-6008-055

Involved Employee

E 1

Employee # [redacted]	Last Name KELLEY		First Name TINA	M.I. M.
Sex: F Race: W	Rank DEPUTY	Unit Assignment: TRANSIT SERVICES BUREAU	Work Assignment (Unit #, Module, etc.): 602F	
ShiftTime (*circle only one*): EM (PM) Day	ShiftType (*circle only one*): (Regular) Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:	
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case #	Interviewed? ☒
Hrs of sleep prior to shooting:	Duty Time (hrs): 1400	Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, (Uniform w/ Vest)	Other Factors: WORKING WITH PARTNER, DEPUTY A. SMITH	
Age: [redacted] Height: 5' 04"	Weight 140			
Range Qualification Date: [redacted]		PPC Qualification Date: [redacted]	Laser Training Date: [redacted]	
Certified with Weapon Used? [redacted]	Patrol Certification? [redacted]	Certification Unit: [redacted]	Prior Shootings? ☒	Number of Prior Shootings: 1
Field Training Officer Emp # [redacted]	Last Name [redacted]		First Name [redacted]	M.I.
Field Training Officer Emp # [redacted]	Last Name [redacted]		First Name [redacted]	M.I.

E 2

Employee # [redacted]	Last Name GARCIA		First Name DIANNE	M.I.
Sex: F Race: H	Rank DEPUTY	Unit Assignment: TRANSIT SERVICES BUREAU	Work Assignment (Unit #, Module, etc.): 685B	
ShiftTime (*circle only one*): EM (PM) Day	ShiftType (*circle only one*): (Regular) Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:	
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case #	Interviewed? ☒
Hrs of sleep prior to shooting:	Duty Time (hrs): 1400	Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, (Uniform w/ Vest)	Other Factors: WORKING IN A ONE PERSON UNIT	
Age: [redacted] Height: 5' 04"	Weight 130			
Range Qualification Date: [redacted]		PPC Qualification Date: [redacted]	Laser Training Date: [redacted]	
Certified with Weapon Used? [redacted]	Patrol Certification? [redacted]	Certification Unit: [redacted]	Prior Shootings? [redacted]	Number of Prior Shootings: [redacted]
Field Training Officer Emp # [redacted]	Last Name [redacted]		First Name [redacted]	M.I.
Field Training Officer Emp # [redacted]	Last Name [redacted]		First Name [redacted]	M.I.

E 3

Employee # [redacted]	Last Name RIORDAN		First Name DANIEL	M.I. D.
Sex: M Race: W	Rank DEPUTY	Unit Assignment: TRANSIT SERVICES BUREAU	Work Assignment (Unit #, Module, etc.): 604F2	
ShiftTime (*circle only one*): EM (PM) Day	ShiftType (*circle only one*): (Regular) Overtime Off Duty	Intoxication/Drug Usage? ☐	Substance Used:	
Hospital Admission? ☐	Hospital Name:	Coroner Case? ☐	Coroner Case #	Interviewed? ☒
Hrs of sleep prior to shooting:	Duty Time (hrs): [redacted]	Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, (Uniform w/ Vest)	Other Factors: WORKING WITH PARTNER, DEPUTY HARPER	
Age: [redacted] Height: 5' 11"	Weight 160			
Range Qualification Date: [redacted]		PPC Qualification Date: [redacted]	Laser Training Date: [redacted]	
Certified with Weapon Used? [redacted]	Patrol Certification? [redacted]	Certification Unit: [redacted]	Prior Shootings? [redacted]	Number of Prior Shootings: [redacted]
Field Training Officer Emp # [redacted]	Last Name [redacted]		First Name [redacted]	M.I.
Field Training Officer Emp # [redacted]	Last Name [redacted]		First Name [redacted]	M.I.

Officer Involved Shooting
Suspect Information

URN: 004-02160-6008-055

Suspect Information

S 1

Last Name ELLIS		First Name KEVIN	M.I. D.
AKA Last Name		First Name	M.I.
Sex: M Race: BLACK	Street Address: [redacted]	City [redacted]	State & Zip Code: [redacted]
Work Phone: [redacted]	Home Phone: [redacted]	Social Security #: [redacted]	Driver's License #: [redacted]
Age: 39 D.O.B. 06-28-64	Height: 5' 9" Weight: 210	FBI # [redacted]	CII # [redacted]
Booking # 8068789	Primary Charge: 245 (A)(1)PC	Secondary Charge: 245 (A)(2)PC	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☒	Mental Illness? ☒	Criminal History? [redacted]
Vehicle Make NONE		Model:	Year:

S__

Last Name		First Name	M.I.
AKA Last Name		First Name	M.I.
Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make		Model:	Year:

S__

Last Name		First Name	M.I.
AKA Last Name		First Name	M.I.
Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make		Model:	Year:

S__

Last Name		First Name	M.I.
AKA Last Name		First Name	M.I.
Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make		Model:	Year:

See Other Side

SUPPLEMENTAL EMPLOYEE WITNESSES
Los Angeles County Sheriff's Department

Employee Witnesses

Last Name SMITH	First Name AMORE		M.I.
Street Address EMP. # [redacted]	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
CURT LIVESAY• Chief Deputy District Attorney
CURTIS A. HAZELL • Assistant District Attorney

RICHARD D. DOYLE • Director

October 27, 2004

Captain Raymond Peavy
Los Angeles County Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. # 04-0269
L.A.S.D. # 004-02160-6008-055

Dear Captain Peavy:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 29, 2004, non-fatal shooting of Kevin Ellis by Deputies Daniel Riordan, Tina Kelley, Dianne Garcia, [redacted] and [redacted] of the Los Angeles Sheriff's Department (LASD). We find that the involved LASD personnel acted lawfully in self-defense and defense of each other.

The following analysis is based upon the reports relating to this matter submitted to this office on July 8, 2004, by Detective Randy Seymour, LASD Homicide Bureau. The District Attorney's Command Center was notified of this incident at 10:15 p.m. on March 29, 2004. Deputy District Attorney Christian Gullon and Senior Investigator [redacted] were notified by the Command Center and responded immediately to the scene. They were given a briefing and a walk-through of the scene by investigators from the LASD Homicide Bureau. The deputies involved in the incident gave voluntary statements to investigators which were considered in our analysis.

FACTUAL ANALYSIS

On March 29, 2004, Deputies Scott Harper and Daniel Riordan were on duty and assigned to the Sheriff's Transit Service Bureau. At approximately 8:30 p.m., during a routine patrol of the "Blue Line" Willow Street passenger station, the Deputies were notified by the train operator that there was a "crazy man" on the tracks. Deputies also received notification from the Communications Division, of an individual playing "chicken" with the train at the same station.

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
WEBSITE: http://da.co.la.ca.us

The deputies approached the individual, later identified as Kevin Ellis, on foot, along the train tracks. Ellis yelled at the approaching deputies and began throwing rocks at them. The deputies took cover behind a utility pole as Ellis continued to throw rocks. The deputies then drew their weapons. As Harper drew his weapon, Ellis sat down at the base of the embankment on the east side of the tracks. Neither deputy was able to see Ellis' right hand because he appeared to be concealing it in his waistband. Both deputies shouted commands to show his hands. Ellis replied "I got a gun. You guys want to see it, come over here and I'll show it to you." Harper requested assistance from additional LASD personnel.

Ellis remained seated at the base of the embankment as other deputies and the LASD air unit arrived. Deputy Robert Reynolds was across the tracks from Ellis and was able to see that Ellis' hands were concealed in his waistband. According to Reynolds, Ellis refused to comply with several requests to show his hands. Reynolds said that Ellis ran up the embankment into an area with shrubbery dense enough that Ellis was out of view for a period of 10-15 minutes.

Deputy Mario Rodarte responded to the scene and was in an area further east and on higher ground than the described shrubbery. Rodarte could not see Ellis, but did hear rustling within the bushes. Rodarte could hear commands from deputies telling Ellis to come out of the bushes with his hands up. Rodarte heard the suspect yell "I have a gun. You guys are not going to take me alive."

[redacted] is a transient who was in Veteran's Park, located across the street on the western side of the tracks. He stated that he had seen Ellis earlier in the day with what Hoch believed was a bible near the intersection of Willow Street and Long Beach Boulevard yelling at oncoming traffic. [redacted] believed he heard Ellis tell deputies "All I got is a bible. I got no gun." [redacted] did not actually see Ellis being shot but heard the gunfire. [redacted] appeared confused and responded to questions very inconsistently. He contradicts Ellis' own statements as to what his intentions were.

After a period of 10-15 minutes, Ellis came sliding down the embankment in a sitting position, stood up, and ran toward the deputies standing behind the utility pole. Deputy Reynolds observed Ellis' hands to be held at the waistband area of his clothing. Deputy Riordan described Ellis as letting out a "blood curdling yell" and sprinting toward his position. Riordan said that Ellis had both hands toward his right hip and that Ellis "made it clear he was reaching for a weapon." Riordan said that he was in fear for his own life and the life of Deputy [redacted] who was closest to Ellis but armed only with a beanbag shotgun. Riordan thought that Ellis was going to kill one of the deputies present so he fired one shot. Ellis continued to charge, so Riordan fired two more shots. Several other shots, including beanbags, were fired at Ellis who eventually went down.

Deputies Dianne Garcia and Tina Kelley both fired rounds from their handguns at Ellis while Deputies [redacted] and [redacted] fired "bean bag" shotguns at him. All four of these

deputies described the events similarly to Riordan. Each of them independently described fearing for their own personal safety and that of their fellow deputies.

LASD investigators interviewed Kevin Ellis on April 19th at Long Beach Memorial Hospital. Ellis recalled portions of the incident that occurred on March 29, 2004. He told investigators that he believed all his personal problems would be over if he were to die. He explained that he was diagnosed previously as a schizophrenic and the "voices" convinced him that he was being followed by law enforcement. He stated that he charged the deputies hoping they would kill him quickly. He hoped to be fatally shot in the head. Ellis acknowledged that his actions that night would have led deputies to believe he was armed.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of others is justifiable if the person claiming the right to use self-defense actually and reasonably believed that he or the person being defended is in imminent danger of death or great bodily injury. People v. Williams, (1977) 75 Cal.App.3rd 731, People v. Glover, (1903) 141Cal. 233, 239 and People v. Ortiz (1923) 63 Cal.App. 662, 668.

Penal Code §§ 692, 693 & 694 specifically authorize an individual protecting himself or another to use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. See also, CALJIC 5.30 , 5.32

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins, (1961) 189 Cal.App.2d 575.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo, (1948) 85 Cal.App.2d 577.

CONCLUSION

Unbeknownst to deputies, Kevin Ellis was suicidal and created a high risk situation hoping that the deputies would kill him. Ellis stated he had a gun and charged deputies, while concealing his hands, in an attempt to persuade the deputies of the necessity of shooting him. Under these circumstances it was certainly reasonable for the deputies to believe that in order to prevent serious injury or death, the use of deadly force was necessary. In fear for their lives and the lives of their partners, the Deputies Riordan, Kelley, and Garcia, responded with deadly force to end

the threat. Deputies [redacted] and [redacted] perceived the identical threat and used less lethal weapons to stop Ellis. We conclude that all five of the deputies acted in lawful self-defense and the defense of others. Therefore, we are closing our file and will take no further action on this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By

CHRISTIAN GULLON
Deputy District Attorney
(213) 974-5054

c: Deputy Daniel Riordan, # [redacted]
Deputy Tina Kelley, # [redacted]
Deputy Dianne Garcia, # [redacted]
Deputy [redacted] # [redacted]
Deputy [redacted] # [redacted]